USURPATION OF THE SENATE.

TWO SPEECHES

OF

HON. CHARLES SUMNER,

ON THE IMPRISONMENT OF THADDEUS HYATT.

In the Senate of the United States, 12th March and 15th June, 1860.

FIRST SPEECH.

The following resolution was reported to the Senate by Mr. MASON, of Virginia, Chairman of the Harper's Ferry Investigating Committee:

"Whereas Thaddeus Hyatt, appearing at the 'bar of the Senate, in custody of the Sergeant-'at-arms, pursuant to the resolution of the 'Senate of the 6th of March instant, was re-'quired, by order of the Senate then made, to 'answer the following questions, under oath 'and in writing: '1. What excuse have you 'for not appearing before the select committee 'of the Senate, in pursuance of the summons 'served on you on the 24th day of January, '1860? 2. Are you now ready to appear be-'fore said committee, and answer such proper 'questions as shall be put to you by said com-'mittee?' time to answer the same being given 'until the 9th of March following; and whereas, 'on the said last-named day, the said Thaddeus 'Hyatt, again appearing in like custody at the 'bar of the Senate, presented a paper, accom-'panied by an affidavit, which he stated was 'his answer to said questions; and it appear-'ing, upon examination thereof, that the said 'Thaddeus Hyatt has assigned no sufficient 'excuse in answer to the question first afore-'said, and, in answer to the said second ques-'tion, has not declared himself ready to ap-'pear and answer before said committee of the 'Senate, as set forth in said question, and has 'not purged himself of the contempt with 'which he stands charged: Therefore,

"*Be it resolved*, That the said Thaddeus 'Hyatt be committed by the Sergeant-at-arms 'to the common jail of the District of Colum-'bia, to be kept in close custody until he shall 'signify his willingness to answer the questions 'propounded to him by the Senate; and for 'the commitment and detention of said Thad-'deus Hyatt, this resolution shall be a sufficient 'warrant.

"*Resolved*, That whenever the officer having 'the said Thaddeus Hyatt in custody shall be 'informed by said Hyatt that he is ready and 'willing to answer the questions aforesaid, it 'shall be the duty of such officer to deliver the 'said Thaddeus Hyatt over to the Sergeant-at-'arms of the Senate, whose duty it shall be 'again to bring him before the bar of the 'Senate, when so directed by the Senate."

On the question upon its paasage, 12th March, 1860, Mr. SUMNER spoke as follows:

Mr. PRESIDENT: It is related in English parliamentary history, that, on a certain occasion, when the House of Commons was about to order the commitment of a somewhat too famous witness to the custody of the Sergeant-at-arms, the Speaker interfered by volunteering to say, as he put the question,

"that the House ought to pause before they came to a decision upon a point in which the liberty of the subject was so materially concerned." That same question is now before us. We are to pass on the liberty of a citizen.

Pardon me, if I say that such a question cannot, at any time, be trivial. But it has an unaccustomed magnitude on this occasion, because the case is novel in this body; so that what you now do, besides involving the liberty of the gentleman before you, will establish a prededent which, in itself, will be a law for other cases hereafter.

Now, if it is conceded that the Senate is invested with all the large powers claimed by the Houses of Parliament, then I cannot doubt its power in the present case, although I might well question the expediency of exercising it. But this is notoriously untrue. It is well known that Parliament is without the constraint of a written constitution; and it has been more than once declared—much to the indignation of our revolutionary fathers—that it is "omnipotent" to such extent, that it can do anything it pleases, except make a man of a woman, or a woman of a man. Surely the Senate has no such large powers; it is not "omnipotent;" but it is within the constraint of a written Constitution. Instead of authority in all possible cases, it has authority only in certain specifie cases.

If the Senate can summon witnesses to its bar, and compel them to testify, under pains and penalties, it must be by virtue of powers delegated in the Constitution—I do not say by express grant, but at least by positive intendment. I say positive intendment; for nothing is to be presumed against liberty.

There are certain cases in which the power is clear. First, and most conspicuously, in the trial of impeachments; secondly, in determining the elections, returns, and qualifications of its members; and thirdly, in punishing its members for disorderly behaviour. All these proceedings are judicial in character and purpose, and carry with them, as a natural incident, the power to compel witnesses to testify.

Beyond these three cases, which stand on the express words of the Constitution, there are two other cases, *quasi*-judicial in character, which, though not supported by any express words of the Constitution, have grown out of necessity and reason, amounting to a positive intendment of the Constitution, and have been sanctioned by precedents. I refer, first, to the case of an inquiry into an alleged violation of the privileges of this body, as where a copy of a treaty was furtively obtained and published; and, secondly, to an inquiry into the conduct of servants of the Senate, like that now proceeding with regard to the Printer, on the motion of the Senator from New York, [Mr. KING.] If I were asked to indicate the principle on which these two cases stood, I should say it was that just and universal right of *self-defence* inherent in every parliamentary body, as in every court, and also in every individual; but which is limited closely by the simple necessities of the case.

Such are the five cases in which this extraordinary power has been heretofore exercised; the first three standing on the text of the Constitution, and the other two on the right of self-defence necessarily inherent in the Senate; all five sanctioned by precedents of this body; all five judicial in character; all five judicial also in purpose and intent; and all five agreeing in this final partic-

ular, that they have no legislative purpose or intent. Beyond these cases there is no precedent for the exercise by the Senate of the power in question.

And it is now proposed to add a new case, most clearly without any support in the Constitution; without any support in the right of *self-defence*, inherent in the Senate, and without any support in the precedents of the Senate.

A committee has been appointed to inquire into the facts attending the late invasion and seizure of the armory and arsenal at Harper's Ferry by a band of armed men, and report whether the same was attended by any armed resistance to the authorities and public force of the United States, and the murder of any citizen of Virginia, or any troops sent there to protect public property; whether such invasion was made under color of any organization intended to subvert the Government of any of the States of the Union; the character and extent of such organization; *whether any citizens of the United States, not present, were implicated therein or accessory thereto, by contributions of money, ammunition, or otherwise;* the character and extent of the military equipments in the hands or under the control of said armed band; where, how, and when the same were obtained and transported to the place invaded; also, to report what legislation, if any, is necessary by the Government for the future preservation of the peace of the country, and the safety of public property; with power to send for persons and papers.

And this committee, after several weeks of session, now invokes the power of the Senate to compel the witness to testify. The chairman of the committee, the Senator from Virginia, [Mr. Mason,] who calls for the imprisonment of an American citizen, has shown no authority for such an exercise of power in the Constitution, or in the admitted right of self-defence, or in the precedents of the Senate. He cannot show any such authority. It does not exist.

Surely, where the Constitution, and reason, and precedent, all three are silent, we might well hesitate to exercise a power so transcendent. But I shall not stop here. I go further, and point out two specific defects in the resolution of the Senate.

First. The inquiry which it institutes is clearly judicial in character; without, however, any judicial purpose, or looking to any judicial end. The committee is essentially a Tribunal, with power of denunciation, but without power of punishment; sitting with closed doors, having the secresy of the Inquisition or the Star Chamber, or, if you please, the grand jury; with power to investigate facts involving the guilt of absent persons, and to denounce fellow-citizens as felons and traitors. If such a power is lodged anywhere outside of the judicial tribunals, it must be in the House of Representatives, as the Grand Inquest of the nation, with its power to impeach all civil officers, from the President down; but it cannot be in the Senate. Let me cite an illustration. The Constitution of Maryland provides expressly that the House of Delegates may inquire, on the oath of witnesses, into all complaints, grievances, and offences, as the grand inquest of the State; and may commit any person for any crime to the public jail, there to remain until discharged by due course of law. But I doubt if the Senate of that neighbor State could erect itself into a Grand Inquest.

If the Senate of the United States have power to make the present inquiry,

then, on any occasion of alleged crime, of whatever nature, whether of treason or murder or riot, it may rush to the assistance of the grand juries of the District, or, still further, it may rush to the assistance of the grand juries of Virginia; in short, it will be an Inquest of commanding character, and with far-reaching, all-pervading process, supplementary and ancillary to the local Inquest; or, rather, so transcendent in its powers, that by its side the local Inquest will be dwarfed into insignificance. Surely this cannot be proper or constitutional. But perhaps I am especially sensitive on this point; for, as a citizen of Massachusetts, I cannot forget that her Bill of Rights, originally the work of John Adams, provides expressly that the legislative department shall never exercise judicial powers, and the judicial department shall never exercise legislative powers; to the end, as it is solemnly declared, that it may be a government of laws, and not of men.

But, assuming that the resolution is defective so far as it constitutes an Inquest into crime, it may be said that the witness should be compelled to answer to the other parts. Surely the Senate will not resort to any such refinement in order to imprison a citizen.

Secondly. But there is a broader objection still: that whatever may be the power of the Senate in judicial cases, it cannot compel the testimony of a witness in a proceeding of which the declared purpose is merely legislative. Officers of the Government communicate with Congress and its committees simply by letter. They are not summoned from distant posts, or even from their office here. And I know not why a distant citizen, who is charged with no offence, and who in every right is the peer of any office-holder, should be treated with less consideration. If any information from him be desired for any legislative purpose, let him communicate it in the way most convenient to himself, and most consistent with those rights of the citizen which all are bound to respect.

At all events, if this power is to be exercised, let it not be under a simple resolution of the Senate; but by virtue of a general law, passed by both Houses, and affirmed by the President, so that the citizen shall be surrounded with certain safeguards.

Mr. President, I confidently submit that a power so entirely without support, and also so obnoxious to criticism, at the same time that it is so vast, is not to be carelessly exercised. You cannot send the witness to prison without establishing a new precedent and commencing a new class of cases. You will declare that the Senate, at any time—not merely in the performance of its admitted judicial duties, but also in the performance of its mere legislative duties—may drag a citizen from the most distant village of the most distant State, and compel his testimony, involving the guilt or innocence of absent persons, or, it may be, of the witness himself. This is a fearful prerogative, and, permit me to say, that in assuming it you liken yourselves to the Jesuits, at the period of their most hateful supremacy, when it was said that their power was a sword whose handle was at Rome, and whose point was in the most distant places. You take into your hands a sword, whose handle will be in this Chamber, to be clutched by a mere partisan majority, and whose point will be in every corner of the Republic.

If the present case were doubtful, which I do not admit, I feel that I can-

not go wrong when I lean to the side of Liberty. But, even admitting that you have the power, is this the occasion to use it? Is it, upon the whole, expedient? Is the object to be accomplished worth the sacrifice? It is well to have a giant's strength; but it is tyrannous to use it like a giant.

For myself, sir, I confess a feeling of gratitude to the witness, who, knowing nothing which he desires to conceal, and chiefly anxious that the liberties of all may not suffer through him, feeble in body and broken in health, hardly able to endure the fatigue of appearing at your bar, now braves the prison which you menace, and thrusts his arm as a bolt to arrest an unauthorized and arbitrary proceeding.

SECOND SPEECH.

On the 15th June, 1860, Mr. MASON, of Virginia, Chairman of the Harper's Ferry Investigating Committee, in submitting his final report, further submitted the following order:

"*Ordered*, That Thaddeus Hyatt, a witness 'confined in the jail of this city for refusal to 'appear and testify before said committee, be 'discharged from custody, and that a copy of 'this order be delivered to the jailer by the 'Sergeant-at-arms, as his warrant for discharging said prisoner."

On the question upon its passage, Mr. SUMNER spoke as follows:

Mr. PRESIDENT: I welcome with pleasure the proposition for the discharge of Mr. Hyatt from his long incarceration in the filthy jail where he has been detained by the order of the Senate. But I am unwilling that this act of justice should be done to a much-injured citizen, without for one moment exposing the injustice which he has received at your hands.

The case, it seems to me, can be made as plain as a diagram.

We must not forget a fundamental difference between the powers of the House of Representatives and the powers of the Senate. It is from the former that the Senator from Virginia has drawn his precedents, and here is his mistake.

To the House of Representatives are given *inquisitorial* powers expressly by the Constitution, while no such powers are given to the Senate. This is expressed in the words, "The House of Representatives shall have the *sole* power of impeachment." Here, then, obviously, is something delegated to the House, and not delegated to the Senate—namely, those inquiries which are in their nature preliminary to an impeachment—which may or may not end in impeachment; and since, by the Constitution, every "civil officer" of the General Government may be impeached, the *inquisitorial* powers of the House may be directed against every "civil officer," from the President down to the lowest on the list.

This is an extensive power, but it is confined solely to the House. Strictly speaking, the Senate has no general *inquisitorial* powers. It has *judicial powers* in three cases under the Constitution:

1. To try impeachments.

2. To judge the elections, returns, and qualifications of its members.

3. To punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

In the execution of these powers, the Senate has the attributes of a court, and, according to established precedents, it may summon witnesses and compel their testimony, although it may well be doubted if a law be not necessary, even to the execution of this power.

Besides these three cases, expressly named in the Constitution, there are two others, where it has already undertaken to exercise *judicial powers*, not by virtue of express words, but in *self-defence*:

1. With regard to the conduct of its servants, as of its Printer.

2. When its privileges have been violated, as in the case of William Duane, by a libel, or in the case of Nugent, by stealing and divulging a treaty while still under the seal of secrecy.

It will be observed that these two classes of cases are not sustained by the text of the Constitution, but if sustained at all, it must be by that principle of universal jurisprudence, and also of natural law, which gives to every body, whether natural or artificial, the right to protect its own existence—in other words, the great right of self-defence. And I submit that no principle less solid could sustain this exercise of power. It is not enough to say that such a power would be *convenient*, highly convenient, or important. *It must be absolutely essential to the self-preservation of the body;* and even then, in the absence of any law, it may be open to the gravest doubts.

"Doubtless," says Blackstone, "all 'arbitrary measures, well executed, are '*the most convenient.*"—(*Commentaries, vol.* iv, *p.* 350.) But *mere convenience* is not a proper reason, under a free Government, for the assumption of powers not granted; and this is especially the case where the powers are arbitrary and despotic, and touch the liberty of the citizen.

Now, if the present inquiry were in the House of Representatives, and were directed against the President or the Secretary of War, on the ground of negligence or malfeasance at an important moment, it would be clearly within the jurisdiction of that body, which has the *sole* power of impeachment; but it would not come within the jurisdiction of the Senate until it became the duty of the latter body to try the impeachment instituted by the House.

But the present inquiry is neither preliminary to an impeachment, nor on the trial of an impeachment. It has no such element to sustain it. It is precisely the same as if an inquiry should be instituted into the murder of Dr. Burdell in New York—or into the burning of slaves in Alabama—or into the banks of New York—or into the conduct of the Supreme Court of Wisconsin in alleged obstructions of the Fugitive Slave Bill—with regard to all which the Senate has no judicial powers. And yet, it has judicial powers in all these cases, precisely to the same extent that it has in the case of John Brown at Harper's Ferry.

I know it is said that this power is necessary *in aid of legislation*. I deny the necessity. *Convenient*, at times, it may be; but *necessary*, *never*. We do not drag the members of the Cabinet or the President to testify before a committee, *in aid of legislation;* but I say, without hesitation, they can claim no immunity which does not belong equally to the humblest citizen. Mr. Hyatt and Mr. Sanborn have rights as ample as if they were office-holders. Such a power as this—which, without the sanction of law, and merely at the will of a partisan majority, may be employed to ransack the most distant States, and to drag citizens before the Senate all the way from Wisconsin or from South Caro-

lina—may be convenient, and, to certain persons, may seem to be necessary. An alleged necessity has, throughout all time, been the apology for wrong.

"So spoke the Fiend, and with *necessity*
The tyrant's plea excused his devilish deeds."

Such, according to Milton, was the practice among the fallen angels.

Let me be understood as admitting the power of the Senate, where it is essential to its own protection or the protection of its privileges, but not where it is required merely in aid of legislation. The difference is world-wide between what is required for *protection*, and what is required merely for *aid;* and here I part company with Senators with whom I am proud on other matters to act. They hold that this great power may be exercised, not merely for the *protection* of the Senate, but also for its *aid* in framing a bill or in maturing any piece of legislation. To aid a committee of this body merely in a legislative purpose, a citizen, guilty of no crime, charged with no offence, presumed to be innocent, honored and beloved in his neighborhood, may be seized, handcuffed, kidnapped, and dragged away from his home, hurried across State lines, brought here as a criminal, and then thrust into jail. The mere statement of the case shows the dangerous absurdity of such a claim. "Nephew," said Algernon Sidney in prison, on the night before his execution, "I value not my own life a chip; but what concerns me is, that the *law* which takes away my life may hang every one of you, whenever it is thought convenient." It was a dangerous *law* that aroused the indignation of the English Patriot. But in the present case, there is not even a law—nothing but an order made by a fractional part of Congress.

There are Senators here who pretend to find in the Constitution the right to carry slaves into the National Territories. That such Senators should also find in the same Constitution the right to make a slave of Mr. Hyatt or Mr. Sanborn, or of anybody else, merely to aid legislation, is not astonishing; but I am at a loss how Senators who love Freedom can find any such right in the Constitution.

I say nothing now of the precedents of the British Parliament, for they are all more or less inapplicable. We live under a written Constitution, with certain specified powers; and all these are restrained by the 10th amendment, declaring that "The powers not delegated to the Uni-' ted States, nor prohibited to the States, ' are reserved to the States respectively, ' or to the people." But even the British precedents have found a critic at home, in the late Chief Justice of England, Lord Denman, pronouncing judgment in the great case of *Stockdale* v. *Hansard*, (1 Adolph. and Ellis, 1,) and also in the words of an elegant and authoritative historian, whose life has been passed in one or the other of the two Houses of Parliament; I refer to Lord Mahon, now the Earl Stanhope, who, in his History of England, (vol. iv, page 30,) thus remarks:

"I may observe, in passing, that, ' throughout the reign of George II the ' privileges of the House of Commons ' flourished in the rankest luxuriance. * ' * * So long as men in authority are ' enabled to go beyond the law, on the ' plea of their own dignity and power, *the* ' ONLY *limit to their encroachments* ' *will be that of the public endurance.*"

Nothing can be more true than this warning. But Lord Brougham has expressed himself in words yet stronger,

and, if possible, still more applicable to the present case:

"All rights," says this consummate orator, "are now utterly disregarded by the advocates of privilege, 'excepting that of exposing their own 'short-sighted impolicy and thoughtless 'inconsistency. Nor would there be 'any safety for the people under their 'guidance, if unhappily their powers of 'doing mischief bore any proportion to 'their disregard of what is politic and 'just."—*Lord Brougham's Speeches, vol.* iv, *p.* 344.

With these remarks, I quit this question, anxious only that the recent Usurpation of the Senate may not be drawn into a precedent hereafter.

BUELL & BLANCHARD, Printers, Washington, D. C.